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LAW

Justices Lift Big Barrier to Effort By Maine to Rein In Drug Costs

By SARAH LUECK and ROBERT S. GREENBERGER
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WASHINGTON -- The Supreme Court lifted a major barrier to Maine's effort to rein in prescription-drug costs, a blow to pharmaceutical companies that challenged the state.

The 6-3 decision didn't endorse the Maine program, which would require drug companies to give the state discounts off retail prices. But the justices set aside an injunction, put in place in response to a lawsuit from the Pharmaceutical Research and Manufacturers of America, a drug-industry trade group, that has prevented Maine from moving ahead.

Numerous steps likely remain before Maine can implement the program, including further legal wrangling. "We can't predict at this preliminary state the ultimate fate of the Maine Rx program," wrote Justice John Paul Stevens in the court's main opinion.

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But pharmaceutical stocks reacted strongly to the decision Monday. That's because if the program in Maine proceeds it could become a model for other states looking to contain health costs in the face of budget shortfalls.

Shares of **Eli Lilly & Co.** fell \$2.78 to \$60.75, shares of **Pfizer Inc.** dropped \$1.81 to \$31.80, shares of **Wyeth** were down \$1.43 to \$41.75, **Merck & Co.**'s shares fell \$2.80 to \$56.65 and American depositary shares of **GlaxoSmithKline PLC** were down \$2.18 to \$40.87, all in New York Stock Exchange composite trading at 4 p.m. Monday. The Dow Jones U.S. Pharmaceutical Index, which measures the trading activity of 30 companies, fell 4.19%.

The program, called Maine Rx, would require drug companies to give the state the same discount -- about 20% off retail prices -- that it receives when buying medications for Medicaid, the joint state-federal program for the poor. The discount would be passed on to residents who don't have drug coverage, regardless of income. Companies that refuse to participate face regulations making it difficult to sell their products to the state's Medicaid program.

The program, approved by the Maine legislature in 2000, immediately came under fire from the drug industry, which has said it would impose price controls and deprive Medicaid recipients of needed medications.

FOR THE RECORD

Peter Walsh, acting commissioner of Maine's Department of Human Services, said state officials are aiming to

Read [the court's opinion](#)² on Maine Rx, by arrangement with FindLaw (www.findlaw.com)³

• [Maine Drug Plan Awaits a Review](#)⁴
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implement the program this year. But he indicated the state is open to negotiation. "We'd love to have the pharma companies [sit down] and say how we can develop an affordable program."

The federal Department of Health and Human Services, which oversees the Medicaid program, wants to review the Maine program to see how it might affect the state-federal program for the poor, said HHS spokesman Campbell Gardett. Maine's program "could involve delays in people in [Medicaid] getting drugs," he said, so HHS Secretary Tommy Thompson "should get to weigh whether there is a burden" on Medicaid.

Further legal struggles also are likely.

"In the very short term, this is going back to district court," said Marjorie Powell, PhRMA's senior assistant general counsel. "The full impact of today's ruling will depend on whether other states choose to adopt Maine's policy by restricting access of Medicaid beneficiaries and their doctors to medicines in order to obtain price discounts for non-Medicaid patients," said a spokesman for Merck & Co., Whitehouse Station, N.J.

—Scott Hensley in New York contributed to this article.

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